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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund.

Rulemaking 12-10-012

**AMENDED SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

This Amended Scoping Memo and Ruling ( Scoping Memo) sets forth the procedural schedule and addresses the scope of this proceeding, as well as other procedural matters pursuant to Public Utilities Code (Pub. Util. Code) Section 1701.1 and Article 7 of the Commission’s Rules of Practice and Procedure.<sup>1</sup> Specifically, this ruling revises the scope of this proceeding to implement programmatic changes to the California Advanced Services Fund (CASF) including new methods of private-public partnerships, allowing and incentivizing the use of existing infrastructure, establishing various strategies for investing in low-income households and communities for infrastructure, and adoption goals as required by Assembly Bill (AB) 1665 (Stats. 2017, Ch. 851E.Garcia). This ruling requests interested parties to file comments on the attached Staff Proposal to implement the program.

**1. CASF Procedural Background**

On October 25, 2012, the Commission issued an Order Instituting Rulemaking (R.) 12-10-012 proposing to change the CASF applicant eligibility

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<sup>1</sup> California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

rules to allow non-telephone corporations to apply for CASF grants and loans. Subsequently, the legislature enacted Senate Bill (SB) 740 (Padilla) expanding eligibility and making that issue moot. During the 2013-2014 legislative session, the Legislature passed AB 1299 (Bradford). AB 1299 created an additional account under the CASF program called the Broadband Public Housing Account (Public Housing) to support the deployment of broadband infrastructure and adoption programs in eligible publicly supported housing communities.

In Decision (D.) 14-12-039, the Commission adopted the application requirements and guidelines for the Public Housing and closed the proceeding.

On March 9, 2017, the Commission issued D. 17-03-002, which reopened this proceeding to implement the provisions of SB 745 (Hueso) for the Public Housing and Rural and Regional Consortia (Consortia) Accounts. In August 2017, the Commission adopted Resolution T-17575, which modified rules for the Public Housing and Consortia Accounts. This proceeding has remained open.

On October 15, 2017, the Governor signed AB 1665 into law. This urgency legislation amended §§281, 912.2, and 914.7, the statutes governing the CASF program. Pursuant to AB 1665, the goal of the CASF program was revised to provide funding for infrastructure projects so that by December 31, 2022, 98 percent of California households in each consortia region, as identified by the Commission on or before January 1, 2017, would have broadband access

## **2. AB 1665 Legislative Findings and Declarations**

The availability of high-speed Internet access, referred to generically as “broadband” and including both wired and wireless technologies, is essential 21st century infrastructure for economic competitiveness and quality of life. Economic studies confirm that the use of broadband technologies increases

economic productivity as a foundation for increased efficiency in organizational operations and enhanced profitability in business.

Broadband infrastructure is also vital to the operation and management of other critical infrastructure, such as energy generation systems and the electrical grid, water supply systems, and public safety and emergency response networks. There is a need for world-class broadband infrastructure throughout California to support these major infrastructure investments, and thereby to protect lives, property, and the environment.

It is the intent of the Legislature that California be a national leader and globally competitive in the deployment and adoption of broadband technology and in implementing quality universal access for all residents.

It is the intent of the Legislature that California achieve the goal specified in §281(1)(b) of the Public Utilities Code by fostering private investment, maximizing California's ability to obtain available federal funds, and administering the California Advanced Services Fund to fund broadband infrastructure where private investments and federal funds are not available and not use moneys in that fund to overbuild the broadband infrastructure.

It is the intent of the Legislature that the Public Utilities Commission develop strategies with recipients of moneys from the Connect America Fund to leverage those moneys to serve unserved areas identified in the April 2017 California Advanced Services Fund Annual Report and to leverage investments in anchor institutions to encourage cost-effective deployment to unserved households.

It is the policy of the state to encourage collaboration among stakeholders and to promote public-private partnerships to harness the expertise and strengths of all partners to serve the public interest.

### **3. Program Changes Initiated by AB 1665**

AB 1665 introduced a number of changes to the CASF program. A full list of the changes is attached hereto as Appendix A. Key changes that this proceeding will implement are the following:

- New Program Accounts and New Monies;
  - Infrastructure Grant Account \$300 million;
    - Line Extension \$5 million included;
  - No new loans (3 granted);
  - Consortia Account \$10 million;
    - Focus on infrastructure deployment activities only;
  - Public Housing Account (no new money);
    - Infrastructure and Adoption;
  - Adoption Account (\$20 million); and
- Annual workshops by each April 30 through 2022.

### **4. Scope and Bifurcation of Proceeding**

Due to the necessity that the Broadband Adoption Account accept applications by July 1, 2018, this proceeding will be bifurcated to focus on adoption first. In addition, Phase I will address the relatively non-complicated implementation issues related to the Public Housing and Loan Accounts. It is anticipated that an interim decision addressing these issues will be issued in the early second quarter of 2018.

The remaining issues in this proceeding, such as Infrastructure, Line Extension and Consortia Accounts, will be addressed in Phase II. It is anticipated that a final decision addressing the Phase II issues will be issued in the latter half of 2018.

This proceeding will also address other possible changes to the program, including those proposed by staff to streamline and improve CASF program

efficiency and efficacy, investments in priority low-income households and communities and enhanced collaboration with carriers, state and local governments. The overall objective is to maximize collaboration to attain state and regional adoption and infrastructure goals

#### **4.1. Phase I: Broadband Adoption and Public Housing and Loan Accounts**

##### *Communications Staff Proposals*

Communications Division Staff have prepared proposed **Broadband Adoption**, Public Housing and Loan Accounts Application Requirements, Guidelines and Questions attached as **Appendix B** to address the issues set forth in Phase I of this proceeding. Comments are requested on all elements of these proposals.

##### *Broadband Adoption Account*

Phase I of this proceeding will resolve issues necessary to implement a process to award grants for the Broadband Adoption Account. The purpose of this account is to increase adoption. Actions could include increasing access to free publicly available broadband, after-school broadband access and digital inclusion for communities with low adoption. Grants from this Account could be for digital literacy training programs and public education to communities with limited broadband adoption, including low-income communities, senior communities, and communities facing socioeconomic barriers to broadband adoption. As set forth in AB 1665, the Commission will determine the criteria and methodology for verifying these outcomes.

AB 1665 requires the Commission to **give preference to programs in communities with demonstrated low broadband access.** AB 1665 does not prescribe an adoption goal, except that the Commission needs to report on “broadband adoption levels” and “the number of formerly unserved households

subscribing to broadband service in areas covered by projects funded” by the CASF.<sup>2</sup> **The goal for CASF adoption funding must be determined.** Existing Commission reports on adoption show the best predictor of broadband adoption appears to be income.<sup>3</sup> Given this backdrop, data on, and consumer knowledge about merger agreements and other affordable broadband options will be important for the implementation of the Adoption Account. **In addition, the relationship between broadband infrastructure and adoption is an area that warrants investigation.**

The Commission will also consider appropriate administrative controls to ensure that funds granted to eligible applicants are administered efficiently and cost-effectively, consistent with the Account’s stated purposes and objectives.

*Public Housing Account*

Phase I will also address proposed changes for the Public Housing Account. AB 1665 did not provide funding for this account. However staff has proposed changes to existing Public Housing rules to clarify the sections on reporting, payment, and execution and performance based on staff’s experience with the account. In addition, the Commission must determine the applicable process for a publicly supported community eligible for funding via the Public Housing Account, after all existing funds available for the Public Housing

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<sup>2</sup> Pub. Util. Code § 914.7(10) and (11).

<sup>3</sup> California Broadband Report: A Summary of Broadband Availability and Adoption in California as of June 30, 2011, [www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Utilities\\_and\\_Industries/Communications - Telecommunications and Broadband/Reports and Presentations/California Broadband Report\\_June\\_2011\\_CPUCmmCLEAN.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Reports_and_Presentations/California_Broadband_Report_June_2011_CPUCmmCLEAN.pdf).

Account have been awarded, to submit an application for funding from the Infrastructure and/or Adoption Accounts.

*Loan Account*

Additionally, Phase I will address proposed treatment of the three existing loans and two pending loan applications as a result of AB 1665. AB 1665 did not provide funding for this account.

**4.2. Phase II: Infrastructure, Line Extension, and Consortia Accounts**

*Communications Staff Proposals*

Commission Communications Division staff have prepared Proposed Infrastructure, Consortia and Line Extension Application Requirements, Guidelines and Questions for Phase II of this proceeding, attached hereto as Appendix C. These are the remaining issues in the proceeding not otherwise resolved in Phase I. These Phase II issues will be addressed at the conclusion of Phase I. The Phase II issues are summarized below, and may be further amended or augmented, as deemed appropriate by the assigned Commissioner and/or Party comments.

*Infrastructure Account* Phase II will consider proposed changes for the Infrastructure Account. The Commission must determine program rules and procedures, prioritizations, and eligibility for the Infrastructure Account to establish the most efficient and effective strategy to reach the new goal of providing broadband access to 98 percent of California households in each consortia region. This new goal and new speed criteria will affect how the Commission determines served and unserved households, prepares maps, and conducts other program analysis and administrative processes. The Commission has published the California Interactive Broadband Availability Map showing

unserved areas that offer speeds below 6 Mbps download and 1 Mbps upload, and the CAF II and CASF project areas that are program ineligible.<sup>4</sup>

In addition, the Commission must determine a final right of first refusal (ROFR) procedure, including a review of the existing criteria, adopted in Resolution T-17443 to determine if an ROFR designation should be extended beyond 180 days and the criteria that will be used to determine whether an extension is permitted.<sup>5</sup> The Commission also needs to determine the treatment of CAF II areas and rules for challenges.

Further, the Commission needs to develop rules for infrastructure projects that provide last-mile broadband access to households to which no facility-based broadband provider offers broadband service at speeds of at least 10 Mbps downstream and 1 Mbps upstream for consortia regions that accomplish the 98 percent goal.<sup>6</sup>

To assist bringing broadband access to prioritized low-income areas, Phase II will consider other possible revisions to the Infrastructure Account. Currently, a completed eligible application will be reviewed by staff and may be recommended to the Commission for approval via a resolution. Staff proposes two alternatives to this Commission resolution process: (1) Projects meeting specific criteria are eligible for Expedited Ministerial approval by staff in lieu of a Commission resolution; (2) Projects deemed “high-priority” by the Commission for which no subsequent applications have been received are eligible for staff to

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<sup>4</sup> <http://www.broadbandmap.ca.gov>.

<sup>5</sup> On December 14, 2017, the Commission adopted Resolution T-17590, which established new processes and timelines for an existing provider to invoke its ROFR pursuant to AB 1665.

<sup>6</sup> Pub. Util. Code § 281(f)(15).



make a Request for Proposal via the State contracting process. Additionally, staff proposes minimum set-aside of funding to ensure investment in low-income unserved communities.

In addition, the Commission will consider program changes to the CASF Performance Audit<sup>7</sup> and improvements to increase infrastructure participation, such as: paying CEQA costs as incurred instead of after construction, reducing the bond requirement, leveraging existing networks, and replacing the zip-code area designation requirement with a geo-located street address designation requirement. The Commission will look at project cost and cost per household in new ways and consider the rights of way in proposed projects, including whether a project proposes to use overhead or underground facilities and leasing or buying existing infrastructure.

*Line Extension*

The Commission will resolve issues necessary to implement a process to allow an individual household or property owner to apply for a grant to offset the costs of connecting the household or property to an existing or proposed facility-based broadband provider. The Commission must determine the funding limit to households based on income and the appropriate selection criteria.

The manner and conditions whereby payments are made to ensure a successful line extension program is another issue to be resolved. Appropriate requirements and standards must be developed for documenting that the

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<sup>7</sup> CASF 2nd Interim Performance and Financial Audit Report (Issued March 30, 2017), available at <http://www.cpuc.ca.gov/General.aspx?id=9226>.

facility-based broadband provider has successfully connected the household or property.

*Consortia Account*

Phase II will also address implementation of the Consortia Account “to facilitate deployment of broadband services by assisting infrastructure applicants in the project development or grant application process.”<sup>8</sup> These actions include collaborating with local officials, potential providers, and stakeholders as well as identifying potential CASF infrastructure projects to achieve the goal of reach 98 percent broadband deployment in each consortia region.

Issues to be resolved relating to the Consortia Account include: 1) applicable standards or criteria to govern the submission of proposals and determination of appropriate consortia grant amounts; 2) appropriate administrative controls to provide assurance that funds granted to consortia are consistent with the requirements of AB 1665; 3) the manner and conditions whereby payments are made to a consortium; and 4) modifications to the existing rules based on staff’s experience with the account.

**5. Schedule**

As set forth in this scoping memo and ruling, AB 1665 implementation issues are currently in the scope of this proceeding. The Commission asks parties to comment on all the Staff recommendations, including the proposed scope and bifurcation of the proceeding in order to expedite the issuance of an interim order to implement the Adoption Account. As indicated, supra, attached to this scoping memo and ruling are proposals for implementing AB 1665,

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<sup>8</sup> Pub. Util. Code § 281 (g)(1).

prepared by the Commission's Communications Division. Appendix B contains proposed Adoption, Public Housing, and Loan Accounts application requirements, guidelines and questions. Opening comments on the proposed scope and Appendix B (Phase I Staff Proposal) shall be filed and shall be served on the CASF service list for R.12-10-012 within 30 days of the issuance of this scoping memo and ruling. Reply comments shall be filed in R.12-10-012 and served on the service list for R.12-10-012 within 15 days of the last day to file opening comments.

To assist workshops/public forum discussions and to implement other AB 1665 requirements, Appendix C contains proposed Infrastructure, Line Extension, and Consortia Account application requirements, guidelines and questions. Opening comments on Appendix C (Phase II Staff Proposal) shall be filed in R.12-10-012, and shall be served on the CASF service list for R.12-10-012 within 60 days of the issuance of this scoping memo and ruling. Reply comments shall be filed in R.12-10-012 and served on the service list for R.12-10-012 within 15 days of the last day to file opening comments.

As part of its enhanced collaboration and partnership efforts, the Commission will hold workshops/public forums throughout the state, in order to receive input on the implementation of these program changes, learn of existing carrier commitments, and develop partnerships for regional solutions. The Commission will investigate tactics and strategies for community engagement and leadership on grant proposals to achieve program goals. The Commission's Communications Division staff will conduct additional workshops/public forums, as needed, in order to resolve technical issues, including the identification of areas for CASF grants that may require expedited action.

The first round of workshops will occur in March in Oroville, Madera, Los Angeles and El Centro. Additional workshops will be conducted in May and June in other parts of the state. The assigned Commissioner or Administrative Law Judge will issue a ruling that sets forth the agenda and additional detail as needed

The schedule for the proceeding is set forth below. Pursuant to § 1701.5, we anticipate this proceeding will be concluded **within 18 months of the issuance of this scoping memo and ruling:**

| <b>Event</b>  | <b>Date</b>  |
|---|--|
| First Round of Workshops/Public Forums <sup>9</sup>   | <ul style="list-style-type: none"> <li>• Oroville (March 14, 2018)</li> <li>• Madera (March 16, 2018)</li> <li>• El Centro (March 28, 2018)</li> <li>• Los Angeles (March 30, 2018)</li> </ul> |
| Comments Filed and Served on Appendix B (Phase I Staff Proposal)  | March 16, 2018   |
| Reply Comments Filed and Served on Appendix B (Phase I Staff Proposal)                                    | April 2, 2018  |
| Comments Filed and Served on Appendix C (Phase II Staff Proposal)   | April 16, 2018   |
| Reply Comments Filed and Served on Appendix C (Phase II Staff Proposal)                                   | May 1, 2018  |
| Publish Draft Interim Order on (1) Adoption, (2) Public Housing, (3) Loan (4) Infrastructure Accounts     | April or May 2018  |
| Adopt Interim Order   | May or June 2018   |
| Additional Round of Workshops/Public Forums   | May and June<br>Exact dates and locations TBD  |
| Publish Draft Final Order on (5) Consortia Account, (6) Line Extension Program rules and Remaining Issues | October 2018   |
| Adopt Final Order   | November 2018  |

Until new program rules are in place, the Commission will continue funding of applications in the interim from the remaining funds.<sup>10</sup> Infrastructure

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<sup>9</sup> Specific Workshop/Public Forum Times and Agendas to be provided by ALJ Ruling.

applications submitted after October 15, 2017 will be reviewed pursuant to the requirements set forth in AB 1665.

## **6. Parties and Service List**

The current service list for this proceeding remains in effect and valid.

Persons who file responsive comments to this Ruling will become parties to this proceeding and will be added to the “Parties” category of the official service list upon such filing. In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should promptly request addition to the “Information Only” category as described below. They will be removed from that category upon obtaining party status. Entities who only wish to monitor the proceeding, but not participate as an active party, shall send a request to the Commission’s Process Office via electronic mail ([process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov)) or by postal mail (Process Office, CPUC, 505 Van Ness Avenue, San Francisco, California 94102) and indicate that they wish to be added to the “Information Only” section of the service list. The service list is posted on the Commission’s website, [www.cpsc.ca.gov](http://www.cpsc.ca.gov).

Any person or party interested in participating in this rulemaking but who is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-7074, (866) 836-7875 (TTY-toll free) or (415) 703-5282 (TTY) or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

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<sup>10</sup> Old program accounts and budget balance (approximates as of November 30, 2017, includes state operations): Infrastructure Grant Account (\$33 million); Consortia Account (\$990,000); and Public Housing Account (\$12 million).

The Commission has adopted Rule 2.3.1 for the electronic service of documents related to its proceedings. The Rule is available on our website at <http://www.cpuc.ca.gov/PUC/efiling>. All parties shall comply with the requirements of this rule.

**7. Assignment of Proceeding**

Martha Guzman Aceves is the assigned Commissioner and W. Anthony Colbert is the assigned ALJ in this proceeding.

**8. Proceeding Category and Need for Hearings**

In the initial scoping memo, the Commission categorized this proceeding as quasi-legislative. The initial scoping memo determined that the issues in the proceeding could be resolved through comments without the need for evidentiary hearings. No change is made to these findings.

**9. Ex parte Communications**

In a quasi-legislative proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors and the assigned ALJ are permitted without restriction or reporting as described at § 1701.4(b) and Article 8 of the Rules.<sup>11</sup>

Therefore, **IT IS RULED** that:

1. The amended scope is set forth in the body of this ruling until amended by a subsequent ruling of the assigned Commissioner or Administrative Law Judge.
2. Opening comments on the proposed scope and Appendix B (Phase I Staff Proposal) shall be filed in Rulemaking 12-10-012, and shall be served on the

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<sup>11</sup> Interested persons are advised that, to the extent that the requirements of Rule 8.1 et seq. deviate from Public Utilities Code Sections 1701.1 and 1701.4 as amended by SB 215, effective January 1, 2017, the statutory provisions govern.

California Advanced Services Fund service list for Rulemaking (R.) 12-10-012

within 30 days of the issuance of this scoping memo and ruling. Reply comments shall be filed in R.12-10-012 and served on the service list for R.12-10-012 within 15 days of the last day to file opening comments.

3. Opening comments on Appendix C (Phase II Staff Proposal) shall be filed in Rulemaking (R.) 12-10-012, and shall be served on the California Advanced Services Fund service list for R.12-10-012 within 60 days of the issuance of this scoping memo and ruling. Reply comments shall be filed in R.12-10-012 and served on the service list for R.12-10-012 within 15 days of the last day to file opening comments.

Dated February 14, 2018, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES  
Martha Guzman Aceves  
Assigned Commissioner